

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-160416
	:	TRIAL NO. B-1506491A
Plaintiff-Appellee,	:	
vs.	:	
	:	<i>JUDGMENT ENTRY.</i>
MICKIE ISBEL,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Mickie Isbel pleaded guilty to burglary in violation of R.C. 2911.12(A)(3). As part of her sentence, the trial court ordered her to pay \$15,000 restitution. Isbel asserts three assignments of error challenging the trial court's order of restitution, her trial counsel's effectiveness, and her conviction. We affirm.

Isbel argues her first and second assignments of error together, but we address them separately. In her first assignment of error, Isbel asserts that the trial court erred by imposing restitution without a restitution hearing, and by imposing a restitution amount unsupported by the record.

Because Isbel was convicted of a felony and can only appeal her sentence under R.C. 2953.08, we review her sentence to determine whether we clearly and convincingly find that the imposition of restitution under R.C. 2929.18 was contrary to law. *State v. Thornton*, 1st Dist. Hamilton No. C-160501, 2017-Ohio-4037, ¶ 12; *See State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 7.

Isbel argues that the trial court erred when it imposed restitution without a hearing. A trial court may impose restitution in an amount based on the victim's economic loss. R.C. 2929.18(A). If the offender disputes the amount of restitution, the trial court is required to hold a restitution hearing. R.C. 2929.18(A)(1); *State v. Lalain*, 136 Ohio St.3d 248, 2013-Ohio-3093, 994 N.E.2d 423, paragraph two of the syllabus. However, a defendant can waive the right to a restitution hearing. *See State v. Jackson*, 1st Dist. Hamilton No. C-140573, 2015-Ohio-3742, ¶ 5. Isbel's trial counsel objected to the amount of restitution, and the trial court offered to continue the sentencing hearing to allow trial counsel to cross-examine the victim. However, trial counsel declined the trial court's offer, and thereby waived Isbel's right to a restitution hearing. *See id.*

Isbel further argues that the record did not support the amount of restitution. The trial court has discretion to order restitution, but may not order an amount greater than the amount of economic loss suffered by the victim as a direct and proximate result of the commission of the offense. *Lalain* at ¶ 3; R.C. 2929.18(A)(1). "[T]he court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information * * * ." R.C. 2929.18(A)(1). A restitution order must be supported by competent, credible evidence, "so that the court can discern the amount to a reasonable degree of certainty." *State v. Sexton*, 1st Dist. Hamilton No. C-110037, 2011-Ohio-5246, ¶ 3; *see State v. Warner*, 55 Ohio St.3d 31, 69, 564 N.E.2d 18 (1990).

Here, the jewelry and coins stolen from the victim's home are an economic loss that Isbel directly and proximately caused. R.C. 2929.01(L). Trial counsel argued that there were no receipts or appraisals to corroborate the victim's valuation

of the property. However, trial counsel did not challenge the veracity of the victim's statement or the victim-impact statement and declined the opportunity to do so at a restitution hearing.¹ *Compare State v. Albaugh*, 11th Dist. Portage No. 2013-P-0025, 2013-Ohio-5835, ¶ 12-13. There is therefore competent, credible evidence to support the amount of restitution given counsel's waiver of a restitution hearing and the victim-impact statement that indicated a value for the jewelry and coins stolen. *See State v. Andrews*, 1st Dist. Hamilton No. C-110735, 2012-Ohio-4664, ¶ 27. We do not clearly and convincingly find that the trial court's imposition of restitution was contrary to law, and therefore overrule Isbel's first assignment of error.

In her second assignment of error, Isbel argues that her trial counsel was ineffective because he had failed to request a restitution hearing to determine the correct amount of restitution and her ability to pay. To establish ineffective assistance of counsel, Isbel must show (1) "that [her] counsel's representation fell below an objective standard of reasonableness," and (2) "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *State v. Bradley*, 42 Ohio St.3d 136, 142, 538 N.E.2d 373 (1989), quoting *Strickland v. Washington*, 466 U.S. 668, 687-688, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.*, quoting *Strickland* at 694. "[T]here is no reason for a court deciding an ineffective assistance claim * * * to address both components of the inquiry if the defendant makes an insufficient showing on one." *Id.* at 143, quoting *Strickland* at 697.

On the state of this record, we hold that Isbel has failed to establish that there is a reasonable probability that, but for counsel's alleged errors, the proceeding's

¹ R.C. 2947.051(B) requires that a victim-impact statement "itemize any economic loss suffered by the victim as a result of the offense * * *."

result would have been different. There is no record evidence to dispute the victim's valuation of the stolen items. Accordingly, we need not address whether counsel's performance was deficient, and must overrule Isbel's second assignment of error.

Isbel's third assignment of error is that the trial court erred in convicting her of third-degree-felony burglary because the State's recitation of facts during the plea hearing supported only a first-degree-misdemeanor trespass conviction. However, Isbel pleaded guilty to third-degree burglary, and "a counseled plea of guilty is an admission of factual guilt which removes issues of factual guilt from the case." *State v. Wilson*, 58 Ohio St. 2d 52, 388 N.E.2d 745 (1979), paragraph one of the syllabus; Crim.R. 11(B)(1). Isbel's challenge to her conviction upon a plea of guilty is "limited to the knowing, voluntary, or intelligent nature of [her] guilty plea[]." *State v. Mynatt*, 1st Dist. Hamilton Nos. C-100298 and C-100319, 2011-Ohio-1358, ¶ 8. She therefore cannot challenge the sufficiency of the evidence supporting her conviction, and we overrule her third assignment of error.

Having overruled all of Appellant's assignments of error, we affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., CUNNINGHAM and ZAYAS, JJ.

To the clerk:

Enter upon the journal of the court on June 14, 2017
per order of the court _____.

Presiding Judge